

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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PATRICIO LINARES,

Plaintiff,

-v.-

9:03-CV-1408  
(LEK)(RFT)

ALBRITH, Registered Nurse; ERI SCHWEBKE; ANTHONY  
DELAROSA, Administrator for the neshall; R.N. NURSE KUDLACK,

Defendants.  
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**APPEARANCES:**

**OF COUNSEL:**

PATRICIO LINARES  
Plaintiff, *pro se*  
98-A-2822  
Clinton Correctional Facility  
Box 2001  
Dannemora, New York 12929-2001

HON. ELIOT SPITZER  
Attorney General of the State of New York  
Department of Law  
The Capitol  
Albany, New York 12224

MEGAN M. BROWN, ESQ.  
Assistant Attorney General

RANDOLPH F. TREECE, U.S. MAGISTRATE JUDGE

**ORDER**

By Order, filed on May 23, 2005 ("May Order") (Dkt. No. 41), this Court denied Plaintiff's Motion to Amend his Complaint (Dkt. No. 35) and Plaintiff's Motion to Compel Discovery (Dkt. No. 23). Plaintiff has appealed such Order to the Second Circuit Court of Appeals.<sup>1</sup> Dkt. No. 43. Presently before the Court is Plaintiff's request to proceed *in forma pauperis* during the appeal of his case. Dkt. No. 46.

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<sup>1</sup> It is not clear to this Court whether Plaintiff's appeal is proper pursuant to 28 U.S.C. § 1292.

The procedure for a leave to proceed on appeal *in forma pauperis*, from the District Court to the Court of Appeals, is governed by Rule 24 of the Federal Rules of Appellate Procedure. Rule 24(a)(3) states in relevant part that:

A party who was permitted to proceed in forma pauperis in the district-court action . . . may proceed on appeal in forma pauperis without further authorization, unless:

(A) the district court—before or after the notice of appeal is filed—certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding; or

(B) a statute provides otherwise.

Because this Court previously granted Plaintiff's *in forma pauperis* application (see Dkt. No. 7), and has not revoked same, Plaintiff may proceed on appeal *in forma pauperis* without further authorization from this Court. Accordingly, Plaintiff's Application (Dkt. No. 46) is **denied** as moot.

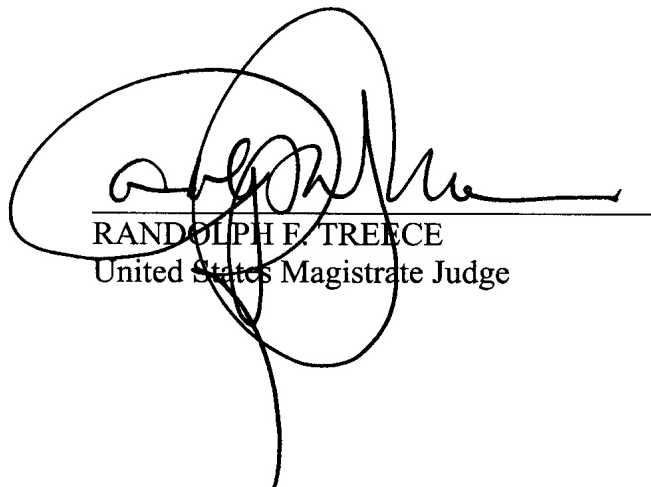
WHEREFORE, it is hereby

ORDERED, that Plaintiff's request to proceed with the appeal of this matter *in forma pauperis* (Dkt. No. 32) is **denied** as moot; and it is further

ORDERED, that the Clerk serve a copy of this Order on the parties.

IT IS SO ORDERED.

Date: October 19, 2005  
Albany, New York



RANDOLPH F. TREECE  
United States Magistrate Judge